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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,480	08/22/2003	Tomoyuki Iwanaga	03560.003345	8722
5514	7590	10/05/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			ROY, ANURADHA	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/645,480	IWANAGA, TOMOYUKI
	<b>Examiner</b>	<b>Art Unit</b>
	Anuradha Roy	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 9/20/05.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-16 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>405/05, 5/2/05, 2/10/04, &amp; 11/17/03</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

***DETAILED ACTION***

***Claim Rejections - 35 USC § 102***

[01] The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

[02] Claim 1 – 3, 5 – 12, 14 & 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Miwa (US Patent Number 5,946,073).

[03] Regarding claim 1, Miwa discloses a noncontact tonometer comprising:

[04] fluid blowing means (Column 1, line 50);

measuring-light projecting means (56);

corneal deformation detecting means (15);

calculating means (Column 1, line 56 & Column 2, line 16);

control means (Column 1, line 65);

predetermined intraocular-pressure setting means (Column 1, line 63);

and comparing means, wherein the control means varies the measuring operation (Column 5, 43-58).

[05] Regarding claims 2, 3, 11, & 12, Miwa states that “the compressed air can be blown at a more appropriate pressure according to the intraocular pressure of the examinee’s eye,” thus it is inherent that the noncontact tonometer has an intraocular-pressure setting means capable of setting at least a first predetermined intraocular pressure and a second

predetermined intraocular pressure for basing the “appropriate pressure”; and also comparing whether the intraocular pressure calculated by the calculating means is higher than the first predetermined intraocular pressure and lower than the second predetermined intraocular pressure (Column 5, lines 8-58).

- [06] Regarding 5 & 14, Miwa discloses a noncontact tonometer, wherein the control means adds a predetermined number of measurements depending on the comparison by the comparing means (Column 5, lines 8-15);
- [07] Regarding claim 6, Miwa discloses noncontact tonometer wherein the control means comprises notifying means for notifying an operator of the comparison by the comparing means (36).
- [08] Regarding claim 7 & 16, Miwa discloses a noncontact tonometer, wherein the fluid blowing means comprises fluid control means for controlling the force of the fluid blown onto the cornea for varying the force of the blown fluid depending on the comparison by the comparing means (Column 5, Lines 43-45 & Column 6, lines 22-29).
- [09] In regards to claim 8 & 9, Miwa discloses a noncontact tonometer, wherein the measuring operation comprises pupil-position sensing means for alignment (40 & Column 3, lines 36-49), corneal bright-point detection means (Column 3, lines 49-53), a solenoid (3), the corneal deformation means (Column 1, line 50), and notifying means for notifying the operator of the comparison by the comparing means (36).
- [10] Regarding claim 10, Miwa discloses a noncontact tonometer comprising:
  - a nozzle (6);

a light source (30);  
a lens system (32, 41, 47, 51, & 52);  
a controller (20);  
controls a measuring operation of the noncontact tonometer, sets a predetermined intraocular pressure and compares the magnitude of the intraocular pressure with the predetermined intraocular pressure (Column 5, lines 8-58, for the reasons stated above),  
wherein the controller varies the measuring operation depending on the comparison of the magnitude of the intraocular pressure with the predetermined intraocular pressure (Column 5, lines 43-45, for the reasons stated above).

***Claim Rejections - 35 USC § 103***

[11] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[12] Claim 4 & 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miwa (US Patent No. 5,946,073) in view of Miwa (US Patent No. 6,602,192).

[13] Regarding claim 4 & 13, Miwa (US Patent Number 5,946,073) discloses a noncontact tonometer, wherein the control means performs a continuous measuring operation (Column 5, lines 8-10), but does not directly disclose the operation stops the continuous measuring operation depending on the comparison by the comparing means. Miwa (US Patent No. 6,602,192) discloses that there is a continuous measuring operation and stops the operation depending on the comparison (Abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to integrate a stopping means in

order to prevent further unnecessary or potential harmful measurements based on the comparisons to predetermined pressure values.

***Additional Claim Rejections - 35 USC § 103***

[14] The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[15] Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miwa in view of Miwa et al. (US Publication No. 2002/0103427).

[16] Miwa discloses all of the elements stated above. However, Miwa does not disclose a beeper for notifying the user. Miwa et al. discloses a noncontact tonometer, wherein the controller comprises a beeper (0076) for notifying an operator of the comparison of the magnitude of the intraocular pressure with the predetermined intraocular pressure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an audible beeper for clearly notifying an operator of the intraocular pressure comparisons.

***Conclusion***

[17] The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In US Patent No. 6,817,981 & 6,875,175, Luce discloses a noncontact tonometer that includes a fluid blowing means, measuring-light projecting means, corneal

deformation detecting means; calculating means; control means; predetermined intraocular-pressure setting means; and comparing means. These elements are also disclosed in Miwa et al. US Patent No. 6,042,544.

- [18] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anuradha Roy whose telephone number is (571) 272-6169 and whose email address is anuradha.roy@uspto.gov. The examiner can normally be reached between 8:00am and 4:00pm.
- [19] If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726.
- [20] Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

[21] ~AR~



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